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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/398,267	09/17/1999	MARK E. LAUBACH	COM21.P004-D	9837

7590 09/26/2003
WAGNER MURABITO & HAO LLP
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SAN JOSE, CA 95113

EXAMINER

PIZARRO, RICARDO M

ART UNIT	PAPER NUMBER
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2661

DATE MAILED: 09/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/398,267

Applicant(s)

LAUBACH ET AL.

Examiner

Ricardo M. Pizarro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/17/99.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-38 and 68-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36 and 68 is/are rejected.
- 7) ☒ Claim(s) 37,38 and 69-71 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

1. Claims 33-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 8.

Claim Objections

2. Claim 36-38 are objected to because of the following informalities:

In claim 36 line 8 it is suggested to applicant to insert "said" before --one or more--.

Claims 37-38 are objected due to their dependency. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 36 and 68 are rejected under 35 U.S.C. 102(e) as being anticipated by Laubach .

U.S. patent No. 6,028,860 (Laubach et al) discloses a prioritized virtual connection transmission in a packet to ATM cell cable network, comprising receiving packets transmitted by a subscriber terminal(Subscriber terminal 106 in Fig. 3) on one or more upstream channels, wherein the

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packets are received by a packet interface on a first upstream path (packets are received at the Receiver port card 306 from upstream channel 302-304 in Fig. 3), examining the packets to determine destination addresses(Examining takes place in Head End Controller element 103 in Fig. 1 that assigns virtual connection to each individual ATM cell, col 7 lines 24-25) and forwarding the packet from the packet interface on a first downstream path for transmission over said one or more downstream channels to designated terminal units according to said addresses (Virtual connection information is used to identify one or more subscriber terminal units -STUs- which are to receive a particular cell), as in claim 36; a cable network having one or more downstream channels and one or more upstream channels(downstream and upstream channel in Fig. 3) , a plurality of subscriber units coupled to the cable network (STUs 106 in Fig. 3), a head end controller (Head end controller 1203 in Fig. 3), a packet interface for receiving packets from the STUs (receiver element 306 in Fig. 3) and a packet forwarder coupled to said packet interface for forwarding packets from said interface on a first downstream path for transmission over one or more downstream channels to designated subscriber terminal units (Transmitter element 313 in Fig. 3), as in claim 68.

Allowable Subject Matter

5. Claims 37-38, 69-71 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim. Please notice objection to claims 36-38 under 37 C.F.R 1.75

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Conclusion

6. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314

(for formal communications intended for entry, for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Ricardo Pizarro** whose telephone number is (703) 305-1121. The examiner can normally be reached on Monday-Friday from 9:00 AM to 5:30 PM. The fax number for this Group is (703) 872-9314.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Douglas Olms**, can be reached on (703) 305-4703.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4700.

September 12, 2003

Ricardo M. Pizarro

KENNETH VANDERPUYE
PRIMARY EXAMINER